

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 28368 of 2001(S)

PETITIONER:

V.P. AYYAPPAN, AGED 53 YEARS, S/o AYYARU PULLEN
ELECTRICAL ENGINEER, CENTRAL INSTITUTE OF
FISHERIES NAUTICAL AND ENGINEERING TRAINING, KOCHI
RESIDING AT VALSURA, ST. JAMES CHAPEL ROAD,
VYTTILLA, KOCHI 19

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
SRI.MARTIN G.THOTTAN
SRI.MANNATIL KUMAR

RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY THE SECRETARY
TO GOVERNMENT OF INDIA, MINISTRY OF AGRICULTURE
DEPARTMENT OF ANIMAL HUSBANDARY AND
DIARYING, NEW DELHI
2. THE DIRECTOR, CENTRAL INSTITUTE OF
FISHERIES NAUTICAL AND ENGINEERING TRAINING
(CIFNET) KOCHI
3. THE CONTROLLER OF DEFENCE ACCOUNTS
(PENSION), ALLAHABAD
4. THE LIEUTNANT, NAVAL PAY OFFICE,
SHAHID BHAGAT SINGH ROAD, BOMBAY 23
5. CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH REPRESENTED BY ITS
REGISTRAR

BY ADV. SRI.P.PARAMESWARAN NAIR, ASST S.G

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O.P. No 28368 of 2001 - S

Dated: 22nd June 2007

JUDGMENT

Radhakrishnan, J.

This original petition has been preferred against the order passed by the Central Administrative Tribunal in O.A. 1168 of 1998. O.A was preferred by the petitioner herein to have his initial pay fixed in the post of Electrical Engineer by allowing one increment for each year of completed service rendered by him in the Navy with effect from 01.07.1976 with all consequential benefits. In the O.A petitioner filed M.A 1136 of 2000 seeking a direction to the Controller of Defence Accounts to clarify the criteria adopted for determining the equivalency of posts in the Naval service vis-a-vis civil service duly producing the materials based on which the said clarification was being issued. Direction was also sought for to the respondent to state whether or not the post of Master Chief Electrical Artificer

(Power) Grade I is equivalent to a civil post in the scale of Rs 700-1300. That application was adjourned on several occasions by the contesting respondents for producing the documents as prayed for in the application. Time was also sought for to file rejoinder to the application but no document was produced; nor any petition was filed. Ultimately application was dismissed by the Tribunal stating as follows:

“We have heard the learned counsel on either side. Whether the applicant has been holding a post equivalent to the re-employed post in defence service, is a matter which the applicant has to establish and that will be decided by the Tribunal in pleadings of the respective parties. The applicant has no right to call upon the respondents to furnish such clarifications and the respondents are not bound to do so. M.A stands dismissed.”

That order was passed on 1.6.2001. On the same day itself O.A was also dismissed. While dismissing the O.A it is stated that the non-commissioned post in the scale of Rs 725-825 which the applicant was holding in the Navy cannot be considered as a post equivalent to the post of Electrical Engineer which is a group A gazetted post. Counsel appearing for the petitioner submitted that the Tribunal is not justified in rejecting the application as well as O.A

when contesting respondents have sought time for the production of documents called for. We are of the view, having sought time for the production of documents it is for them to file statement about the non availability of the documents. Tribunal has adjourned the matter on several occasions. Respondents have not produced the documents or filed rejoinder. Under such circumstances, in our view, the Tribunal is not justified in rejecting the application casting the burden on the applicant to produce the documents called for. We are of the view, if the documents were not available they could have filed statement about the non availability of those documents after having sought time. Without realising that aspect, in our view, the Tribunal is not justified in dismissing the O.A. In such circumstances we are inclined to set aside the order passed in O.A as well as the order in O.A and direct the Tribunal to pass fresh orders on M.A as well as O.A. Considering the facts and circumstances of this case, we feel it would be appropriate that the Tribunal would pass final orders within a period of three months from the date of receipt of a copy of this judgment. Contesting respondents are directed to produce the relevant documents if they are available; failing which they may file an affidavit. Tribunal will dispose of both the

applications in accordance with law. Original Petition is allowed and the orders passed by the Tribunal are set aside.

C.M.P. No 46068 of 2001 would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

22/06/2007
en

[true copy]

APPENDIX

Petitioner's exhibits:

Ext.P1 - True copy of order in OA 1168/98 dt 1.6.2001 passed by the C.A.T, Ernakulam Bench

Ext.P2 - True copy of original application 1168/98 along with its Annexures filed by the petitioner before the Hon'ble CAT, Ernakulam Bench

Ext.P3 - True copy of the reply statement filed by the respondents in O.A 1168/98

Ext.P4 - True copy of the M.A 1136/00 filed by the petitioner before C.A T, Ernakulam Bench

[true copy]